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The Occupational Safety and Health Act of 1970 established the health hazard evaluation program which requires the Department of Health, Education, and Welfare (HEW) to determine, when properly requested by employers or employees, whether substances in workplaces are toxic. The program is administered by the National Institute for Occupational Safety and Health and requires that employers and employees be advised of the results of health hazard evaluations as soon as possible. Findings/Conclusions: Although the National Institute for Occupational Safety and Health (NIOSH) estimates that millions of workers are exposed to thousands of cancer-causing and other dangerous substances in their workplaces, it had received only 892 requests for health hazard evaluations in about 6 years. NIOSH has done little to publicize and promote the program, and officials believe that most employees and employers are not aware of either NIOSH or its health hazard evaluation program. After making health hazard evaluations, NIOSH takes a long time to prepare comprehensive, technical reports that recipients may not understand. Hazards could be identified and corrected sooner and NIOSH personnel could be used more effectively if reports were issued soon after the evaluations were made. The Occupational Safety and Health Administration headquarters does not have a policy, and its area offices do not have a program or procedures, for using hazard evaluation reports to plan inspections. Recommendations: The Secretary of HEW should: widely publicize the hazard evaluation program, make reports more timely by simplifying and shortening them, notify workers immediately when there appear to be toxic conditions, reevaluate issued reports to determine if changes to exposure levels affected the toxicity determinations, analyze evaluation reports to determine whether new or revised standards are needed, establish a program for measuring program effectiveness, and

send reports to other companies and employee representatives of companies that may have similar conditions or substances. The Secretary of Labor should set a policy that area offices inspect workplaces where toxic conditions have been identified and direct its regional offices to be more responsive to HEW's requests for information. (RRS)

6447

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Health Hazard Evaluation Program Needs Improvement

Millions of workers are exposed to thousands of cancer-causing and other dangerous substances in their workplaces. The Department of Health, Education, and Welfare is required, when requested, to evaluate potential health hazards at these sites. However, requests have been few and the Department has not widely publicized that such evaluations are available.

Improvements are needed to make sure that

- evaluations are made when requested,
- hazards are identified and reported promptly,
- prior reports are reevaluated based on new toxicity data,
- reports are more widely disseminated,
- program performance is evaluated, and
- maximum use is made of evaluation reports in developing health standards.



HRD-78-13
MAY 18, 1978



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-163375

To the President of the Senate and the
Speaker of the House of Representatives

This report discusses the need for the National Institute for Occupational Safety and Health to more effectively publicize and operate its program of evaluating health hazards in workplaces.

We made our review because of congressional concern that employers and workers be made aware of toxic chemicals present in their workplaces and that action be taken to minimize exposure to toxic substances. The review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of the report are being sent to the Director, Office of Management and Budget; the Secretary of Labor; and the Secretary of Health, Education, and Welfare.

A handwritten signature in black ink, reading "Luther B. Steets".

Comptroller General
of the United States

D I G E S T

Millions of workers are exposed, often unknowingly, to carcinogens (cancer-causing substances), suspected carcinogens, and other toxic agents.

The Occupational Safety and Health Act of 1970, administered by the Department of Labor's Occupational Safety and Health Administration, protects workers by establishing and providing for the enforcement of safety and health standards for workplaces.

But standards enforcement has not been very effective. In May 1977 GAO reported to the Congress that only 15 health standards had been established and the bleak occupational health conditions that the Congress sought to improve still existed and may be getting worse. (See p. 1.)

The act established another program--the health hazard evaluation program--requiring the Department of Health, Education, and Welfare (HEW) to determine, when properly requested by employers or employees, whether substances in workplaces are toxic. This program is administered by the National Institute for Occupational Safety and Health.

The act requires that employers and employees be advised of the results of health hazard evaluations as soon as possible. If the evaluations detect a potentially toxic substance not covered by a standard, HEW must immediately submit a determination of potential toxicity, with all pertinent criteria, to the Secretary of Labor.

HEW has no enforcement authority. However, its evaluations can and have influenced employers and employees to improve health conditions in the workplace by letting them know (1) what toxic substances are

present and at what level, (2) the potential hazards from exposure, and (3) how to reduce or eliminate the hazards. GAO's limited tests showed that recommended protective measures were often implemented.

Although millions of workers are exposed to dangerous substances, only 892 health hazard evaluations have been requested since the program's inception in 1971 through April 1977.

HEW has no formal policy guidelines for promoting the program and believes that most employers and workers are not aware of the program.

PROGRAM IMPROVEMENTS NEEDED

GAO found the following shortcomings in HEW's program.

- It takes too long--about 10 months--to warn people of hazards. Much time could be saved if reports were shorter and less technical. Recent HEW plans call for more timely reports. (See p. 11.)
- Some requested evaluations were not made because the Department of Labor was inspecting or planned to inspect the workplace, although only a small portion of toxic substances were covered by the standards against which Labor inspects. (See p. 14.)
- HEW did not notify report recipients when new information on safe exposure levels invalidated prior determinations of nontoxicity. (See p. 15.)
- Reports were not sent to employers or employee representatives who may have similar conditions in their workplaces. (See p. 16.)
- The program's effectiveness had not been evaluated to determine whether HEW

reports were (1) were useful to recipients or (2) resulted in any corrective action. (See p. 17.)

--New or revised health standards were not recommended to the Department of Labor when toxic conditions were found. (See p. 17.)

Also, there had not been effective interaction between HEW and the Department of Labor. Labor had not established a plan for following up when evaluations disclosed toxic conditions that violated Labor's standards.

In some cases, evaluation reports showing toxic conditions that exceeded Labor's standards were not received by Labor's area offices. In other cases, reports were received but Labor did not make inspections. Also, HEW has had trouble obtaining information from Labor's regional offices. (See p. 25.)

The Secretary of HEW should:

--Widely publicize the hazard evaluation program.

--Make reports more timely by simplifying and shortening them.

--Notify workers and Labor immediately when there appear to be toxic conditions, but further evaluation is needed.

--Reevaluate issued reports to determine if changes to exposure levels affected the toxicity determinations and, if so, notify the affected parties.

--Analyze evaluation reports to determine whether new or revised standards are needed and, if so, provide the necessary data to Labor.

- Make requested evaluations even though Labor has compliance actions pending or is making or planning an investigation.
- Establish a program for measuring program effectiveness, including followup visits when toxic effects are found.
- Send reports to other companies and employee representatives of companies that many have similar conditions or substances.

The Secretary of Labor should:

- Set a policy that area offices inspect workplaces where HEW has identified toxic conditions that exceed Occupational Safety and Health Administration standards.
- Direct its regional offices to be more responsive to HEW's requests for information.

AGENCY COMMENTS

HEW agreed with most of GAO's recommendations. It did not agree with recommendations that the program be widely publicized and that requested evaluations be made even though Labor has compliance actions pending or is making or planning an investigation. It said that the desirability of reevaluating issued reports to see if toxicity determinations are still valid is being studied. For reasons discussed on pages 10 and 22, we continue to believe these recommendations should be implemented.

Labor agreed with GAO's recommendations and described its planned actions regarding them. (See p. 26.)

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ABBREVIATIONS

GAO	General Accounting Office
HEW	Department of Health, Education, and Welfare
NIOSH	National Institute for Occupational Safety and Health
OSHA	Occupational Safety and Health Administration

CHAPTER 1

INTRODUCTION

During the first 6 years of operation under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651), major emphasis was placed on setting and enforcing standards to provide safe and healthful workplaces.

In May 1977 we reported to the Congress 1/ that (1) workers were exposed to thousands of cancer-causing and other toxic substances in their workplaces, (2) Government efforts to develop mandatory standards under the 1970 act had produced standards for only 15 substances as of September 30, 1976, 2/ and (3) the bleak occupational health conditions which the Congress sought to improve still existed and may have been getting worse.

We recommended numerous actions by the Department of Labor's Occupational Safety and Health Administration (OSHA) and the Department of Health, Education, and Welfare's (HEW's) National Institute for Occupational Safety and Health (NIOSH) to speed up the issuance of health standards.

Because of the many dangerous substances and the time required to issue standards, we also recommended that these two agencies determine whether they should increase efforts to inform, educate, and train employers and employees on toxic substances. We felt that such efforts should encourage improved protection by telling employers and employees about dangerous substances and what should be done for employee protection.

One employer-employee information program authorized by the 1970 act (section 20) is the health hazard evaluation program, administered by NIOSH. Under this program, NIOSH must respond to requests from employers and employees to determine whether substances in workplaces are or may be harmful.

1/"Delays in Setting Workplace Standards for Cancer-Causing and Other Dangerous Substances" (HRD-77-71, May 10, 1977).

2/A standard was later produced for coke oven emissions, bringing the number of substances covered by standards to 16.

LEGISLATIVE REQUIREMENTS FOR HAZARD EVALUATIONS

Section 20 requires the Secretary of HEW, upon a request from any employer or authorized employee representative, to determine if any substance normally found in the workplace has potentially toxic effects in such concentrations as used or found. The request must be written and must specify the grounds on which it is made. Section 20 also requires that the Secretary submit the determinations to employers and affected employees as soon as possible. To carry out this and other responsibilities, the section authorizes the Secretary of HEW to enter workplaces to make inspections and question employers and employees.

The section further states that, if the Secretary determines that any substance is potentially toxic at the concentrations used or found at a workplace and the substance is not covered by an OSHA standard, he must immediately submit the determination and all pertinent criteria to OSHA for consideration in its standards development program.

HOW HAZARD EVALUATIONS ARE MADE

NIOSH was established to carry out HEW's responsibilities under the 1970 act. NIOSH is under the Center for Disease Control, Public Health Service. NIOSH is headquartered in Rockville, Maryland, and has field installations in Cincinnati, Ohio, and Morgantown, West Virginia. The health hazard evaluation program is directed by the Cincinnati office.

Each incoming evaluation request is screened to see if it meets the requirements of section 20 and if the workplace is covered by the act. If so, a NIOSH investigator (from Cincinnati or one of HEW's regional offices) visits the workplace to (1) discuss the matter with the employer and employees, (2) take samples, for laboratory analysis, of air from work areas or samples of dust or particles from equipment, machinery, floors, or other surfaces, and (3) observe work practices.

After the first visit to the workplace, the NIOSH investigator prepares an internal report stating whether he believes a potentially toxic effect exists. Followup work may be required. Such work may include making medical examinations of employees; collecting additional samples; reviewing employees' medical records; and taking other steps to determine what substances are present, their concentrations, and if they are harming or could harm the employees.

When work is completed, a report is sent to the employer and the employee representative. The report usually includes recommendations for actions to protect workers. Any actions taken would be voluntary because NIOSH does not have enforcement authority.

Funding levels and other statistics on the health hazard evaluation program are presented in chapter 2.

SCOPE OF REVIEW

We made this review to find out (1) how widely the health hazard evaluation program was being used and if its use could be increased, (2) how effective the program is in protecting workers from hazards, and (3) if OSHA was using the evaluations in its standards development and enforcement activities.

We made our review at NIOSH and OSHA headquarters; NIOSH's Cincinnati office; and OSHA field offices in Cincinnati and Columbus, Ohio, Indianapolis, Indiana, and Charleston, West Virginia. We also contacted NIOSH officials in HEW's 10 regional offices.

At NIOSH, we reviewed the law, legislative history, and NIOSH's policies, procedures, and practices related to health hazard evaluations. We reviewed records and interviewed officials concerning evaluations requested and completed through April 1977. We discussed selected hazard evaluations with employers and employees. At OSHA, we discussed the use of NIOSH's hazard evaluation reports with officials and reviewed workplace inspection records and other documents to find out how OSHA had used NIOSH reports.

CHAPTER 2

HEALTH HAZARD EVALUATION

PROGRAM NOT ADEQUATELY PUBLICIZED

Although the National Institute for Occupational Safety and Health estimates that millions of workers are exposed to thousands of cancer-causing and other dangerous substances in their workplaces, it had received only 892 requests for health hazard evaluations in about 6 years.

NIOSH has done little to publicize and promote the program. Institute officials believe that most employees and employers are not aware of either NIOSH or its health hazard evaluation program. Because of its potential for helping protect workers from hazardous substances, we believe NIOSH should aggressively promote the health hazard evaluation program.

WORKERS EXPOSED TO THOUSANDS OF SUBSTANCES

NIOSH has published information on about 21,000 toxic chemicals used in workplaces and has identified about 1,900 of these as suspected carcinogens (cancer-causers). Many others can cause other severe or irreversible damage.

The full extent of exposure to toxic chemicals is unknown, but it is estimated that millions of workers are exposed. For example, NIOSH estimates that 21 million workers are exposed to OSHA-regulated substances, of which an estimated 880,000 are exposed to 1 or more of the 16 carcinogens for which OSHA has issued standards.

NIOSH has also estimated that each year 100,000 workers die from occupational illness and 290,000 new cases of occupational disease appear.

Employers and employees may not be aware of dangerous substances in the workplace

In a 1976 report 1/ on chemical dangers in the workplace, the House Committee on Government Operations stated:

1/House Report No. 94-1688, Sept. 27, 1976.

"Identifying and controlling toxic substances in the workplace is becoming progressively more difficult as more chemicals, chemical processes, and chemical products are used in industry. Tens of thousands of trade-name products, whose chemical contents are not disclosed, are used daily. Lack of knowledge about exposure hampers the identification of occupationally caused diseases, illnesses, and deaths and is a major impediment to preventing them.

"Both employers and employees are often unaware of the toxic chemicals in the trade-name products that they buy and use. An extensive NIOSH survey shows that toxic chemicals are found in almost half of the trade-name products and that 90 percent of the time the chemical composition is not known to the buyer or user."

* * * * *

"Unless the hazards are known, protective measures will not be employed. Diagnoses of individuals who are taken ill requires knowledge of the specific chemicals to which they have been exposed; without this, their condition is likely to be attributed to a natural cause. Similarly, treatment may not be adequate. From the viewpoint of the employer, without knowledge of the chemical substances present in his plant, he cannot be confident that he is protecting his workers from harmful exposures, nor can he be certain that he is complying with OSHA health regulations. From the worker's viewpoint, without such knowledge, he cannot know whether his job may be costing him his health or his life."

NIOSH told the Congress in May 1977 that, based on its study of 4,636 workplaces, companies were often not aware of the chemical composition of the substances used in their plants because many of these substances were in trade name products. Over 70 percent of the workers in these 4,636 workplaces were exposed to trade name products with chemical compositions unknown to the companies using these products. By contacting about 10,000 manufacturers, NIOSH learned the chemical composition in about half of the products.

NIOSH's survey showed that more than 7 million workers were exposed to trade name products containing an OSHA-regulated toxic substance and more than 300,000 workers were exposed to trade name products containing 1 of the 16 OSHA-regulated carcinogens. The compositions of about one-third of the products containing an OSHA-regulated substance or carcinogen were designated as trade secrets.

NIOSH DOES NOT EMPHASIZE
HEALTH HAZARD EVALUATION PROGRAM

In spite of the estimates that millions of workers are exposed to dangerous chemicals, NIOSH received only 892 requests for health hazard evaluations from the program's inception in 1971 through April 1977.

NIOSH officials told us that, although the Institute encourages promotion of the program, there are neither written policies advocating its promotion nor guidelines on how to promote it. Regional NIOSH officials promote the program through meetings and speaking engagements. Attendees, such as industrial hygienists, process design engineers, labor union representatives, and safety and health officers, normally have a professional interest in health and safety.

A NIOSH official said that this approach generally does not reach the smaller businesses or the approximately three-fourths of the workforce that is not unionized.

Of the 419 health hazard evaluations completed or in process as of June 1976, 74 were in Ohio, where NIOSH's Cincinnati office directs the health hazard evaluation program.

As of February 1977, NIOSH had 26 professionals (industrial hygienists and medical personnel) assigned to the program. The following table shows NIOSH's total funds and amounts allocated to health hazard evaluations from fiscal years 1972 through 1977.

<u>Fiscal year</u>	<u>Total funds</u>	<u>Health hazard evaluations</u>	
		<u>Amount</u>	<u>Percent</u>
(000 omitted)			
1972	\$ 25,600	\$ 743	2.9
1973	25,100	620	2.5
1974	35,500	760	2.1
1975	34,100	1,074	3.2
1976	39,800	1,316	3.3
1977	<u>49,600</u>	<u>2,601</u>	5.2
	<u>\$209,700</u>	<u>\$7,114</u>	3.4

A NIOSH official told us he believed most employees were not aware of NIOSH's existence or the services available under the program.

POTENTIAL BENEFITS FROM HEALTH HAZARD EVALUATIONS

Although NIOSH does not have any enforcement authority, its reports have stimulated voluntary employer actions. Health hazard evaluations tell employers and employees (1) what dangerous substances are present and in what concentrations, (2) the effects or potential effects of such substances on workers' health, and (3) what steps should be taken to protect the workers. Our limited work showed that recommended protective measures were frequently implemented.

Past evaluations have disclosed many toxic effects

As of April 1977, NIOSH had completed 390 health hazard evaluation reports. In about half of them, NIOSH concluded that employee exposure to substances in the workplace was causing or could cause occupational illness. Many cases involved substances which, according to NIOSH, cause or could cause cancer and other irreversible illness. Many other cases, however, involved "nuisance dusts" or substances that appeared to be less serious.

The following table shows the substances most frequently cited in the 193 NIOSH reports concluding that employees were exposed to toxic conditions that could cause illness.

<u>Substance</u>	<u>Number of times cited (note a)</u>	<u>Known or suspected effects</u>
Dust	21	Eye, ear, and nasal passage irritation (note b)
Silica	19	Lung damage
Lead	12	Anemia and abdominal pain
Toluene	12	Central nervous system depression
Carbon monoxide	11	Enhanced heart irregularity
Polyvinyl chloride	10	Throat irritation
Iron and iron oxides	9	Skin and mucous membrane irritation
Cadmium	8	Kidney damage, emphysema
Vinyl chloride	7	Liver cancer
Hexavalent chromium	6	Lung cancer
Mercury	6	Tremor; gum and mouth inflammation
Toluene diisocyanate	6	Decreased breathing capacity
Formaldehyde	5	Eye, nose, mouth, and throat irritation
Methyl ethyl ketone	5	Mucous membrane and skin irritation
Benzene	4	Cancer (leukemia)
Isopropyl alcohol	4	Mucous membrane irritation
Methylene chloride	4	Central nervous system damage
Oil mist	4	Mucous membrane and skin irritation
Xylene	4	Central nervous system depression

a/In many cases, the NIOSH reports identified more than one substance as potentially toxic in the circumstances found.

b/Health hazard evaluation determination reports cited dusts of several different compositions as potentially toxic. The effect listed is the general effect of "nuisance" dust.

Voluntary protection actions by employers

NIOSH's health hazard evaluations have helped protect employees from health hazards. We contacted employers and employees at nine workplaces where NIOSH had made hazard evaluations and had recommended protective measures, such as providing respirators, better ventilation, showers, protective clothing, and medical examinations.

According to the employees' comments, all of the recommendations were implemented at three workplaces, some were implemented at three other workplaces, and none were implemented at the remaining three workplaces. In three of the six cases in which employees said that only some or none of the recommendations were implemented, the employer disagreed.

CONCLUSIONS

NIOSH estimates that millions of workers are exposed to cancer-causing and other substances that can cause irreversible damage. Employers and employees are often unaware that such substances are present in their workplaces.

NIOSH has placed major emphasis on recommending health standards to OSHA, but it will take years for standards to be established for many dangerous substances. Interim actions are needed.

NIOSH's health hazard evaluation program has helped protect workers. About half of NIOSH's evaluations showed that workers were exposed to dangerous substances. Our limited tests showed that many of the protective measures recommended by NIOSH had been implemented by employers.

In over 6 years, there were only 892 requests for health hazard evaluations. We believe lack of awareness of the service is a major reason that so few requests have been made. NIOSH has no formal policy or guidelines for promoting the program. Its promotion efforts have not been directed to the majority of employers and workers. NIOSH believes that most employers and employees are not aware of the program's existence. NIOSH should place greater emphasis on making employees and employers aware of the program.

RECOMMENDATION

We recommend that the Secretary of HEW direct NIOSH to widely publicize the health hazard evaluation program.

HEW COMMENTS AND OUR EVALUATION

In comments dated March 17, 1978 (see app. I), HEW stated that it believes that the program should not be advertised to the point that demand for evaluations would exceed NIOSH's capability to perform them. HEW believes that the program should be well known in the occupational health community and generally known to labor and industry. Accordingly, the program has been made known to unions, industry groups, and professional groups. HEW stated that regulations were published in the Federal Register prescribing the conditions and procedures for persons to request and for NIOSH to make health hazard evaluations.

According to HEW, NIOSH will continue to examine ways to increase its capacity to provide health hazard evaluations.

We believe that the program should be made known to all employers and employees--not just those who belong to unions or industry groups or who employ industrial hygienists. While the program has been promulgated in the Federal Register, we doubt if most workers or employers are aware of the Federal Register.

HEW implies that, if more people were aware of the program, NIOSH would receive more requests than it could handle. NIOSH was created under the Occupational Safety and Health Act of 1970, which was enacted to assure that every worker has safe and healthful working conditions. We believe that HEW's position of limiting publicity to limit NIOSH's workload is not consistent with the act's intent.

CHAPTER 3

WHY AND HOW NIOSH SHOULD IMPROVE THE PROGRAM

Employees and employers are not promptly informed about hazards in workplaces. After making health hazard evaluations, the National Institute for Occupational Safety and Health takes a long time to prepare comprehensive, technical reports that recipients may not understand. Much of the time between receipt of a request for an evaluation and issuance of a report is spent writing, reviewing, and publishing the report. Also, except in apparent emergencies, it usually takes about 1 to 2 months from the time a request is received until NIOSH visits the workplace.

Hazards could be identified and corrected sooner and NIOSH personnel could be used better if reports were issued soon after hazard evaluations were made.

In addition:

- Some requested evaluations were not made.
- Requesters were not notified when exposure levels once considered nontoxic were later determined to be toxic.
- Reports were not distributed to companies that might have similar hazards.
- The program's effectiveness had not been evaluated.
- Little use had been made of evaluations in developing health standards.

REPORTS TAKE TOO LONG TO BE ISSUED

An October 1975 NIOSH study of 65 hazard evaluation reports completed between July 1974 and June 1975 showed that completing a study and reporting the results took an average of about 1 year. In February 1976 a plan was established to cut this time to 6 months.

We analyzed the 85 reports NIOSH issued between July 1, 1976, and April 30, 1977. The average time from receipt of a request to report issuance was 303 days (245 days for

those reporting nontoxic conditions and 336 days for those reporting toxic conditions).

Report files did not show the time spent on the various steps of the health hazard evaluation process. We attempted to develop the time spent on various steps by analyzing the documents in the file for seven reports issued in April 1977. We could not determine the time spent on each step, but we did determine that:

--About 49 days (excluding one unusually long instance) elapsed from the time a request was received until the workplace was visited. NIOSH's 1975 study showed that it took about 2-1/2 months.

--About 5 months elapsed from the time fieldwork was completed (including laboratory analysis of samples) until the reports were issued. NIOSH's 1975 study showed that it took about 9 months to write and review reports.

We could not determine how long it took to analyze samples and make medical evaluations. However, laboratory analysis apparently takes little time.

The medical section did not maintain records showing when medical evaluations were requested, when staff was assigned, or when evaluations were begun and ended. The section chief said a shortage of medical personnel delayed development of health hazard evaluations for some studies requiring a medical evaluation. The section chief believes that it generally takes about a month before a medical person can be assigned to a health hazard evaluation and about another month before work actually begins. He added that, as of May 1977, the medical section was programed through July 1977. In other words, no medical personnel would be assigned to a new request until August 1977, except in an apparent emergency.

The NIOSH coordinator for laboratory analysis said that routine or normal analyses, when analytical methods have been developed, are done by a contractor. NIOSH usually does the laboratory analysis in-house when analytical methods have to be developed. The coordinator said that normal analysis averages about 10 days from the time the sample is received by the laboratory until the results are returned to the investigator.

Less than half (31) of the 65 evaluations included in NIOSH's 1975 study involved medical evaluations. Also, most (37) did not require any followup visits. Thus, in most cases a health hazard evaluation involves (1) visiting the workplace to interview workers and collect samples, (2) analyzing samples, and (3) advising employers and employees if there are hazards and what can be done about them.

A NIOSH division director (for surveillance, hazard evaluations, and field studies) said that toxic conditions are known when laboratory analysis or medical evaluations are completed. However, except in an emergency, employers, workers, and the Occupational and Safety and Health Administration are not told of toxic conditions until the hazard evaluation report is completed and issued.

The reports are generally lengthy and comprehensive, and include explanations and illustrations of the technical aspects of the investigation, such as the sampling and analytical methodology. NIOSH officials said that the technical data is necessary to provide scientific credibility and support to the report's toxicity determinations. The division director said the reports often challenge the exposure levels in existing standards and, therefore, need to "stand on their own" to support such challenges.

NIOSH's October 1975 study stated that the type of report will influence the length of time required to prepare and review it.

"If it were NIOSH policy that the determination [hazard evaluation] report was only a short (i.e., less than two pages) written communication transmitted to the requestor when the toxicity/non-toxicity had been determined, then there could be savings in the elapsed time associated with the receipt of the request and the sending of the current style determination report. The actual manpower resources * * * associated with the writing and review of the determination report could be devoted to responding more timely to other HHE [health hazard evaluation] requests. The basic documents from the field survey(s) and the analysis of the samples would be available in a file for any investigator who wanted to review the data * * *."

However, NIOSH has never tried this approach or studied its feasibility because the division director believed that if it were adopted, industry, employees, and others would request the backup data. This would tie up NIOSH resources and delay implementation of recommendations.

We believe that NIOSH should issue short reports. Such reports would be more in line with the act's mandate that requesters be provided with information as soon as possible. Also, reduced reporting time would enable NIOSH to make more evaluations, which is vital because of the thousands of toxic substances workers are exposed to.

In August 1977 the NIOSH director said the Institute plans to issue about 75 percent of the routine reports in about 90 days by shortening the reports and speeding up medical evaluations. The more complicated reports are to be issued in an average of 4 to 5 months.

SOME REQUESTS FOR HAZARD
EVALUATIONS NOT HONORED

According to NIOSH, requests are reviewed to determine if illnesses or other evidence of an emergency is apparent. If so, they will immediately investigate. NIOSH always contacts the cognizant OSHA area office after receiving a request. If OSHA has compliance action pending against the employer, or is making or planning an inspection, and there is no emergency, NIOSH tells the requester to resubmit the request if he or she is not satisfied with OSHA's inspection.

From November 1975 through April 1977, NIOSH did not act on at least 15 requests because of OSHA's pending action. NIOSH does not review OSHA's inspection reports to determine the extent of work done or follow up to see if a toxic condition exists.

The NIOSH division director told us that NIOSH declined such requests to avoid getting involved in a possible contested citation in the event NIOSH's findings contradicted OSHA's. We pointed out to him that OSHA's and NIOSH's responsibilities under the act are different. OSHA's responsibility is to determine whether standards are being violated for regulated substances. NIOSH investigates all substances, regardless of whether they are regulated.

For requests denied by NIOSH because of OSHA's involvement, even if OSHA found no violations, there is no assurance that toxic effects did not exist at the worksites. NIOSH has found many cases in which the standards were not being violated but toxic conditions existed.

The division director agreed that OSHA and NIOSH have different responsibilities and that employers may get a false sense of security by relying on OSHA's investigation. He cited a recent case in which the union representative insisted that NIOSH evaluate the plant after OSHA's work. NIOSH found that, despite OSHA's finding that the plant was in compliance, a toxic condition existed and workers were getting sick from lead. OSHA is now apparently concerned that its lead abatement programs are not adequate, and it requested NIOSH to evaluate them.

The division director said that NIOSH would not decline evaluation requests because of OSHA involvement if NIOSH had the resources to make the evaluations.

WORKERS NOT TOLD OF CHANGES TO EXPOSURE LEVELS

The NIOSH division director said that NIOSH has never reevaluated issued hazard evaluation reports or notified affected parties when recommended exposure levels for substances have been lowered.

We selected several reports that showed substances at levels below the OSHA-regulated level. The nontoxicity determinations in the reports were no longer valid because NIOSH later recommended lower exposure levels for those substances. In several reports, NIOSH told workers that their exposure to benzene, nickel, and asbestos did not exceed the OSHA-regulated level. NIOSH later declared these substances as cancer-causing agents and recommended a large reduction in the exposure level.

For example, in one report asbestos was found present at 3.78 fibers per cubic centimeter, a level below the OSHA-regulated level of 5 fibers per cubic centimeter. In December 1976 NIOSH recommended that a level of 0.1 fibers per cubic centimeter be adopted.

Because NIOSH did not notify affected parties, workers and employers probably believe that substances in their

workplaces are not hazardous at the levels found, when in fact they may be. The division director said that NIOSH should perhaps reevaluate its reports and notify the affected parties when lower exposure levels are recommended.

**REPORTS NOT DISTRIBUTED TO
OTHER POTENTIALLY AFFECTED PARTIES**

NIOSH does not send hazard evaluation reports to other parties that may be affected by similar substances. NIOSH sends copies of the reports to the employers, affected employees, OSHA, and State health agencies. Copies are available to the public through the National Technical Information Service, Springfield, Virginia. A listing of reports is printed in the following periodicals:

- American Industrial Hygiene Medicine.
- Journal of Occupational Medicine.
- Job Safety and Health.
- The Center for Disease Control's Morbidity and Mortality Reports.

We reviewed the National Technical Information Service's distribution data to determine how often reports were requested. As of March 1976, 100 reports were available through the Service. An average of 8 copies were sold of each report; about 13 copies were distributed to businesses and industries through the Service's automatic distribution list.

HEW advised us, in commenting on our draft report, that as of June 30, 1977, 243 reports were available through the Service. An average of 12 copies were requested of each report and another 36 copies of each were distributed through the automatic distribution list.

The NIOSH division director said that the Institute's recent survey (see p. 5) could be used as a reference for sending the reports to other employers. The medical section chief said he favors wider distribution of the reports to inform employers and workers that toxic substances may be used in their workplaces.

The director of NIOSH said that reports could be sent to workplaces using similar processes but that it is not

possible with present data to identify all industries where a substance is present. A pilot project for broader dissemination of these reports is being considered.

PROGRAM EFFECTIVENESS NOT MEASURED

NIOSH does not have a program for measuring the effectiveness of the hazard evaluation program and does not determine whether

- reports were understood by and satisfactory to the requesters;
- employers took actions to correct conditions;
- OSHA followed up when standards violations were reported to it; or
- recommendations for such things as equipment or medical monitorship were adequate.

The division director said followup visits are necessary for self-evaluation. In its fiscal year 1975 project plan, the division requested funds for followup visits to some plants where toxic substances were found. According to NIOSH officials, the request was denied because an HEW legal officer contended that, because NIOSH is not an enforcement agency, such visits exceed its authority.

The legal officer told us he now believes that NIOSH has authority to make followup visits under section 20 of the act to conduct research for dealing with occupational safety and health and to develop information on the causes and prevention of occupational accidents and illnesses.

NIOSH officials said they recently prepared a proposal and are negotiating with contractors for a study to evaluate the impact of the hazard evaluation program and to recommend ways to measure its impact on a continuing basis.

LITTLE USE MADE OF REPORTS TO DEVELOP RECOMMENDATIONS FOR STANDARDS

NIOSH has done little to use the health hazard evaluation reports as a basis for recommending standards to OSHA. The reports are sent to OSHA, but they do not contain sufficient data to initiate action for developing standards. Section 20(a)(6) of the act states:

"* * * If the Secretary of Health, Education, and Welfare determines that any substance is potentially toxic at the concentrations in which it is used or found in a place of employment, and such substance is not covered by an occupational safety or health standard * * * the Secretary of Health, Education, and Welfare shall immediately submit such determination to the Secretary, together with all pertinent criteria. * * *"

Although we did not evaluate all of the hazard evaluation reports to determine if standards existed for the substances discussed, we did identify 13 reports on toxic conditions for substances not covered by standards.

OSHA's director for standards development said the reports did not contain enough information to develop a standard or to judge whether one is needed. He said the reports are limited in scope and do not indicate whether the reports' findings are representative of other workplaces. According to him, no hazard evaluation report had ever triggered action within OSHA to develop new standards or modify existing ones. NIOSH's deputy director said the reports alone do not contain enough information for OSHA to develop standards. Supporting recommendations for a standard requires an effort similar to a criteria document. 1/

In 1976 NIOSH, recognizing the need to better implement the act by providing OSHA with additional "pertinent criteria" for substances found to be toxic and not covered by a standard, established the following policy.

"To further clarify such toxicity determinations and make these determinations more obvious and noteworthy both within NIOSH and at OSHA, the following will be implemented:

"Toxicity Determination Report will be prepared and distributed as usual to the requester and other individuals now on the

1/A criteria document is the formal method by which NIOSH recommends health standards to OSHA. A criteria document contains scientific data on the effects of exposure to a substance, the extent of employee exposure, and other supporting information.

distribution list. In addition, a cover memo to the Assistant Secretary for Occupational Safety and Health, DOL [Department of Labor], from the Director, NIOSH, will be prepared summarizing: (1) the toxicity determination as it relates to the fact that there is no OSHA standard for the agent(s) investigated or toxic effects were ascertained at exposure levels below existing OSHA standards; (2) the known toxicological information about the agent(s) (assistance obtained from DBBS [Division of Biomedical and Behavioral Science]); (3) the known information on extent of usage of the agent(s), how they are manufactured and used and estimates of the number of workers exposed; (4) the relationship of the plant investigated to the information discussed in (3); and (5) NIOSH's estimation of the importance of pursuing further health research concerning the agent(s) and recommendations for any appropriate OSHA action."

In August 1976 NIOSH officials identified four hazard evaluation reports that they wanted to transmit to OSHA with additional pertinent criteria. The substances were:

- Trimellitic anhydride.
- Particulate polycyclic organic matter.
- N-methyldicyclohexylamine.
- Dimethylethylamine.

In August 1977 the branch chief for hazard evaluation reports said the special reports were not being worked on and were not far enough along to allow a decision to be made on what actions NIOSH would recommend to OSHA. He did not believe the substances represented a serious or imminent danger that justified an emergency temporary standard.

The NIOSH director said that NIOSH had not implemented its policy as well as it should have.

CONCLUSIONS

Employers and employees should be promptly notified when NIOSH detects health hazards in their workplaces.

This is not happening. The existence of health hazards is usually known after the samples are analyzed. Sometimes medical evaluations are also necessary. However, the presence of hazards is generally not reported until several months later.

Hazard evaluation reports are comprehensive and technical. Their length and complexity contribute to the lack of timeliness in issuing them. Several employee representatives said that workers cannot understand the reports' technical aspects. Clarified and simplified NIOSH reports would (1) be easier to understand, (2) be more timely, and (3) reduce writing and save time, enabling NIOSH to make more evaluations.

Medical evaluations appear to delay some reports. After analyzing the sample, NIOSH should determine the potential toxic effects based upon existing data and immediately report the substance, exposure level, and potential effects to employers and workers. If enough data are not available to make a determination based on the sample, the report should state the substance and exposure level found and later make the medical evaluations or take whatever actions are necessary for a determination. The workers and employers may be able to initiate some corrective actions, if they are aware of the substance and the exposure level.

NIOSH should be more responsive to requests for hazard evaluations, even though OSHA has actions pending at the same plant. NIOSH should also measure its program effectiveness. It should determine whether its evaluations were useful to the requesters and if recommended corrective actions were implemented.

NIOSH should disseminate hazard evaluation reports to other businesses with similar processes whose workers may be affected by similar substances. Although the conditions and levels of the substances may not be the same at other worksites, the report will at least alert employees to the fact that they may be working with potentially hazardous substances.

NIOSH needs to reevaluate its issued hazard evaluation reports to determine if changes to the exposure levels affected the toxicity determinations, especially for substances that have later been identified as carcinogens. If the exposure level NIOSH found is now considered toxic, NIOSH should so notify prior report recipients.

Hazard evaluation reports alone do not provide sufficient criteria for OSHA to initiate standards development action. NIOSH needs to provide additional criteria to support recommendations for standards for those substances for which toxic conditions were found and no standard exists.

RECOMMENDATIONS

We recommend that the Secretary of HEW direct NIOSH to:

- Improve its timeliness in issuing reports. This can generally be accomplished by simplifying and shortening hazard evaluation reports. The reports should provide such basic information as (1) name(s) of substances, (2) exposure levels, (3) determinations of toxicity/nontoxicity, (4) effects, including chronic effects, if known, and (5) recommendations for correcting toxic conditions (such as engineering changes, protective equipment, and medical surveillance), when feasible.
- Notify affected parties and OSHA immediately when there appear to be toxic conditions, but further evaluation is needed.
- Reevaluate issued reports to determine if changes to the exposure levels for specific substances affected the toxicity determination and, if so, immediately notify the affected parties.
- Make requested evaluations even though OSHA has compliance actions pending or is making or planning an investigation.
- Establish a program for measuring program effectiveness, including followup visits when toxic effects are found.
- Disseminate reports to workers and employers in industries that may have similar processes or substances.
- Actively implement its policy to provide additional pertinent criteria to OSHA for substances found to be toxic when such substances are not covered by standards or when existing standards are inadequate.

HEW COMMENTS AND OUR EVALUATION

HEW agreed with our recommendations to (1) improve the timeliness of reports, (2) notify affected parties immediately when there appear to be toxic conditions, (3) establish a program for measuring program effectiveness, and (4) actively implement its policy to provide additional criteria to OSHA when new or improved standards are needed. HEW cited a number of actions it was taking to implement these recommendations.

HEW stated that NIOSH has undertaken pilot projects to determine (1) the need for and feasibility of reevaluating toxicity determinations in issued reports and notifying affected parties if the determination of toxicity has changed and (2) the feasibility of disseminating reports to workers and employers in industries that may have similar processes or substances.

We believe NIOSH should give greater emphasis to re-evaluating toxicity determinations. NIOSH had, in effect, told people that their workplaces were safe. When circumstances change or additional information is known, NIOSH should promptly advise them that these determinations are no longer valid.

According to HEW, NIOSH has acted to improve the timeliness of reports by obtaining additional medical resources, expediting the analyses of samples, and streamlining the review process. Also, complex reports will be prepared only when necessary.

HEW stated that we incorrectly assumed that laboratory evaluations are completed by the time the fieldwork is completed. HEW said that laboratory evaluations may extend for some time after the fieldwork, particularly when new analytical methods must be developed. According to HEW, our statement that laboratory analyses take little time is incorrect.

Rather than assuming that laboratory analysis was completed at the completion of fieldwork, we included the time it took to analyze samples as part of fieldwork. The report has been revised to clarify this.

We said laboratory analyses take little time because NIOSH's field coordinator for laboratory analysis told us that a normal analysis takes about 10 days from the time

the laboratory receives the sample until its analysis is returned to the investigator. He noted that about 66 to 75 percent of the samples are routine. Two industrial hygienists told us that laboratory turnaround time for normal samples is fast and generally does not cause delays.

HEW stated that NIOSH had, in the past, notified affected parties immediately in emergencies. In the future, they will be notified more routinely.

According to HEW, we misunderstood the NIOSH division director responsible for the health hazard evaluation program regarding when toxic conditions are known. (See p. 31.) HEW stated that laboratory and medical data must be analyzed, and any needed statistical tests must be done, and the results written up and reviewed.

The division director told us that toxicity determinations, as a matter of expediency, are usually based on existing standards (threshold limit values). If the sample showed that the level exceeded a standard, it would be determined that toxic conditions existed. A NIOSH industrial hygienist told us that toxicity determinations are generally known when the laboratory analysis is completed. He showed us an interim report that he sent to the requesters, which showed that a toxic condition existed based on levels prescribed in NIOSH's criteria documents and an OSHA standard. He said the findings in interim reports are rarely changed during the review process.

HEW did not agree with our recommendation that NIOSH make requested evaluations even though OSHA has compliance actions pending or is making or planning an investigation. HEW maintained that neither a lack of resources nor the possibility of involvement in a contested OSHA citation was a major factor in NIOSH's decision to decline requests. Rather, HEW believes evaluations should be made only when OSHA's inspections are unlikely to result in a potential health hazard being corrected. HEW points out that, before invalidating a request, NIOSH determines, through discussion with the requester, if NIOSH would have to conduct an evaluation at that specific time.

We agree that making evaluations concurrently with OSHA's inspections may not be warranted. However, NIOSH neither determines what OSHA did or found, nor checks to determine whether OSHA's work was responsive to the requester's concern.

As HEW notes in its comments (see p. 33), health hazard evaluations provide a practical means to assure that workers exposed to substances for which standards have not yet been developed are properly protected. OSHA's inspections are directed toward determining whether employers comply with standards. Requesters may not be aware of the limited scope of OSHA's authority.

HEW stated that NIOSH, in coordination with OSHA, will develop a policy paper to clarify the issue of duplicate inspections. We believe that the Secretary of HEW should assure that the policy provides that NIOSH does not decline requests for evaluations without assurance that the OSHA inspection effectively addressed the requester's concerns.

HEW agreed that the effectiveness of the health hazard evaluation program needs to be evaluated and plans to award a contract to accomplish this.

HEW agreed that additional information needs to accompany reports that are to serve as a basis for new or revised standards and stated that NIOSH (1) will reexamine its efforts in this area and (2) is cooperating with OSHA to improve OSHA's use of evaluations.

CHAPTER 4

OSHA HAS NOT EFFECTIVELY

USED NIOSH HAZARD EVALUATION REPORTS

Occupational Safety and Health Administration headquarters does not have a policy, nor do its area offices have a program or procedures, for using hazard evaluation reports to plan inspections. OSHA also needs to improve its responsiveness to requests for information from the National Institute for Occupational Safety and Health.

The OSHA coordinator for regional programs said OSHA has not established a plan at the regional offices to follow up on hazard evaluations that disclose toxic conditions exceeding its standards. NIOSH submits its hazard evaluation reports to OSHA's regional offices, but these reports do not always reach OSHA's area offices. Three of the 10 OSHA regional offices do not routinely distribute the NIOSH reports to their area offices. At one region which claimed that it forwarded the reports, only 21 of the 60 reports that NIOSH sent to the regional office could be found by area office officials. The OSHA coordinator said some regional offices make inspections based on the reports while others do nothing. He said that OSHA is developing a plan to deal with hazard evaluation reports but that, as of August 1977, the plan had not been completed.

Our review of 69 hazard evaluation reports issued through June 30, 1976, showed that 18 reported toxic conditions at exposure levels which violated OSHA standards. In three cases, OSHA made an inspection as a result of the reports; in nine cases, OSHA either made an inspection before, during, or after NIOSH's review as part of its own program; in four cases, the OSHA area office did not receive the reports; and in the other two cases, inspections were not made.

NIOSH regularly notifies OSHA of planned inspections, gives it the evaluation reports, and recommends compliance actions in some cases. OSHA does not notify NIOSH of planned health inspections, routinely send NIOSH its inspection reports, or routinely give feedback to NIOSH about actions taken or not taken on NIOSH's disclosure of standards violations.

The NIOSH branch chief for hazard evaluations said the biggest problem in dealing with OSHA is getting timely responses for requested information. OSHA regions are inconsistent in their responses. Some regions respond more promptly than others, and some resist responding at all.

CONCLUSIONS

OSHA has not established a regional office program to assure that actions are taken when NIOSH notifies it of exposure levels exceeding OSHA standards. OSHA, in planning its inspections, should give priority consideration to NIOSH's reports to assure that employers comply with existing standards and that the health of workers is not being harmed. OSHA should also assure that all regional and area offices cooperate with NIOSH and respond expeditiously to its requests for information.

RECOMMENDATIONS

We recommend that the Secretary of Labor direct OSHA to:

- Set a policy that area offices inspect workplaces where NIOSH has identified toxic conditions that exceed OSHA standards.
- Direct its regional offices to be more responsive to NIOSH's requests for information.

LABOR COMMENTS AND OUR EVALUATION

In comments dated February 6, 1978 (see app. II), Labor stated that OSHA was establishing procedures for inspecting workplaces based on NIOSH evaluations. If NIOSH determines there is imminent danger, OSHA will respond immediately. In the case of serious hazards, OSHA will schedule an inspection as soon as possible. When a serious hazard is not covered by a specific standard, OSHA will determine whether the general duty clause is violated.

Labor stated that OSHA will notify NIOSH of actions taken on its evaluation reports. OSHA will either state that no inspection is planned or provide the results of the inspection if one is made.

Although not discussed in our draft report, Labor noted that OSHA has reexamined its practice of not entering a workplace where NIOSH is making a health hazard evaluation. OSHA has established a new policy to deal with certain instances in which OSHA should inspect even though NIOSH is present. (See p. 34.)



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

March 17, 1978

Mr. Gregory J. Ahart
Director, Human Resources
Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

The Secretary asked that I respond to your request for our comments on your draft report entitled, "Health Hazard Evaluation Program Needs Improvement." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

We appreciate the opportunity to comment on this draft report before its publication.

Sincerely yours,

Thomas D. Morris
Inspector General

Enclosure

COMMENTS OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE ON THE
COMPTROLLER GENERAL'S DRAFT REPORT ENTITLED "HEALTH HAZARD EVALUATION
PROGRAM NEEDS IMPROVEMENT"

General Comments

In the last several years the National Institute for Occupational Safety and Health (NIOSH) has taken a close look at the Health Hazard Evaluation (HHE) program through two studies. The GAO report complements these studies and will be of assistance in making further improvements to the program.

It should be recognized that GAO focused its analysis only on the HHE program and makes no mention of other technical assistance NIOSH provides. Outside of the HHE mechanism, NIOSH has responded to many requests for assistance from employers, other Federal agencies, and state and local agencies concerning physical agents or for assistance in evaluating the effectiveness of exhaust ventilation control systems and other types of problems not directly involving a specific chemical agent.

GAO Recommendation

That the Secretary of Health, Education, and Welfare direct that NIOSH widely publicize the health hazard evaluation program.

Department Comment

We do not concur that the program should be publicized to the point of creating a potential demand that would exceed our capability to perform. We concur that the program should be well known in the occupational health community and, in general, to labor and industry. Therefore, the program has been made known to unions, industry groups, and professional groups. Regulations were published in the Federal Register (November 17, 1972--42 CFR Part 85) prescribing the conditions and procedures for persons to request and for NIOSH to conduct HHEs.

NIOSH will continue to examine alternatives for increasing its capacity to provide HHE services. Greater use will be made of medical services contracts. Also, contracting out entire HHEs will be tested.

GAO Recommendation

That the Secretary of Health, Education, and Welfare direct NIOSH to improve the timeliness in issuing reports. This can be accomplished in most cases by simplifying and shortening hazard evaluation reports. The reports should provide basic information to include (1) names (s) of substances, (2) exposure levels, (3) toxic/non-toxic determinations, (4) effects, including chronic effects, if known, and (5) recommendations for correcting toxic conditions (engineering changes, protective equipment, medical surveillance, etc.) when feasible.

Department Comment

We concur that the timeliness of reports needs to be improved. NIOSH has taken some steps to shorten the length of time it takes to handle HHE requests. Medical resources available to the program have been increased. Also, NIOSH in fiscal year 1977 initiated the use of medical services contracts to support the HHE program. The review process has been streamlined and shortened. Changes have been made in the handling of samples collected in the field so as to expedite their analysis. Also, HHE requests will be categorized as they are received and this will dictate the type of response provided. This will result in complex reports being prepared only for those requests requiring such reports.

GAO states that it usually takes about 1 to 2 months from the time a request is received until NIOSH visits the workplace. GAO, however, fails to state that within a week of receiving an HHE request, NIOSH makes contact with the requestor. If the case is determined to be an emergency, NIOSH sends investigators to the plant immediately.

GAO assumed that laboratory evaluations are completed by the time the field work is completed. This is not correct. Laboratory evaluations of samples collected in the field may extend for some time after the field work is complete, particularly in the case where new analytical methods must be developed. GAO is not correct in stating that laboratory analysis takes little time.

GAO Recommendation

That the Secretary of Health, Education, and Welfare direct NIOSH to notify affected parties and OSHA immediately when there appear to be toxic conditions, but further evaluation is needed.

Department Comment

We concur. NIOSH has in the past notified affected parties immediately about toxic conditions when it was considered to be an emergency. This notification will now be done more routinely.

GAO quotes the NIOSH division director responsible for the HHE program as saying that toxic conditions are known when laboratory analysis and/or medical evaluations are completed. He was misunderstood. Once available, laboratory and medical data must be analyzed, including performing any needed statistical tests, and the results written up and reviewed. NIOSH does provide requestors with much information before the final report and, as a result of the recent NIOSH study of the HHE program, even more such information is being provided.

GAO Recommendation

That the Secretary of Health, Education, and Welfare direct NIOSH to reevaluate issued reports to determine if changes to the exposure levels to specific substances affected the toxicity determination; and if so, immediately notify the affected parties.

Department Comment

We do not concur that an overall evaluation should be initiated immediately. NIOSH is conducting a pilot project to substantiate the need for this notification and determine the procedures required to complete a reevaluation of past toxicity determinations and notification of affected parties. Current procedure does involve making information on new problems generally available.

GAO Recommendation

That the Secretary of Health, Education, and Welfare direct NIOSH to make requested evaluations even though OSHA has compliance actions pending or if investigating or planning an investigation.

Department Comment

We do not concur. We believe that HHE's should be performed only when it is unlikely that OSHA's inspection will result in correcting a potential health hazard. Consequently, where OSHA is involved, NIOSH proceeds to conduct HHEs only on those cases where it is determined that illness or the threat of illness is evident at the worksite and hazardous conditions are likely to continue. However, before an HHE request is withdrawn or invalidated, NIOSH discusses the request thoroughly with the requestor to determine if in fact it would be necessary for NIOSH to conduct an HHE at that specific time. In order to clarify this issue, NIOSH will develop a policy paper on this procedure in coordination with OSHA.

GAO states that the NIOSH division director responsible for HHEs declines such requests to avoid getting involved with OSHA in a possible contested citation because NIOSH's findings might contradict OSHA's. GAO has taken this comment out of context and as such it is misleading. This is not a major consideration for NIOSH. GAO also attributes a comment to this division director to the effect that NIOSH would not decline evaluation requests due to OSHA involvement if NIOSH had the resources to make the evaluations. This is not true.

GAO Recommendation

That the Secretary of Health, Education, and Welfare direct NIOSH to establish a program for measuring program effectiveness, including followup visits where toxic effects are found.

Department Comment

We concur that a program for measuring HHE program effectiveness is needed. NIOSH is in the final process of awarding a contract for the following purposes:

- a. Conduct a survey of requestors of HHEs to determine what they thought about the usefulness of the reports and the overall utility of the HHE program,
- b. Develop a strategy for followup of HHEs to determine the impact of the program, and
- c. Conduct an assessment of the "spin-off" benefits of the HHE program.

GAO discusses interpretations of an HEW legal officer regarding followup HHEs visits. That discussion indicates that this legal officer at first contended that followup visits exceeded NIOSH's authority, but has now changed his opinion. This is not so. There has been no change in the opinion of this legal officer that NIOSH would be exceeding its authority by making followup visits to see that its HHE recommendations have been carried out. Followup visits for this purpose are too closely related to enforcement and therefore present legal and program difficulties. Followup visits for the purposes of evaluating the effectiveness of the HHE program and to determine whether the recommendations, if followed, were effective in controlling the hazards are authorized under the general research authority of Section 20 of the Occupational Safety and Health Act.

GAO Recommendation

That the Secretary of Health, Education, and Welfare direct NIOSH to disseminate reports to workers and employers in industries that may have similar processes or substances.

Department Comment

We concur to the extent that the potential benefits warrant a pilot effort, recognizing that the scope of this task could be extensive. In cases where important information is newly developed by one or more hazard evaluations, and where this information would have application to other facilities in similar Standard Industrial Classification categories, it seems prudent to disseminate a summary of the finding to those groups. The pilot study, using existing data bases and computerized industrial directories, was initiated in January 1978 to test the feasibility of this approach on a limited basis, prior to full-scale implementation as a standard operating procedure.

GAO Recommendation

That the Secretary of Health, Education, and Welfare direct NIOSH to actively implement its policy to provide additional pertinent criteria to OSHA for those substances found to be toxic when such substances are not covered by standards or when existing standards are inadequate.

Department Comment

We concur. It is recognized that additional information needs to accompany reports which are to serve as the basis for new or revised standards. NIOSH will reexamine its efforts in this area. Further, NIOSH is cooperating with OSHA to improve OSHA's use of HHEs.

Technical Comments

GAO refers to the HHE program as an "information program." Certainly it provides information, but that is not its major intent. The GAO reference does not put the HHE program in context with the other NIOSH information programs. The HHE program provides a practical means to assure that workers exposed to substances for which standards have not yet been developed are properly protected and it also provides information to check the validity of existing standards.

GAO states that the HHE program can help protect workers from cancer-causing substances. The NIOSH HHE program usually does not study chronic effects for substances with unknown health effects. Therefore, regarding cancer-causing substances, the program can only help protect workers exposed to known carcinogens.

In discussing the distribution of HHE reports, GAO presents some data on National Technical Information Service distribution of these reports. The data presented is as of March 1976. As of June 30, 1977, 243 HHE reports were available through the Service. An average of 12 copies were requested of each report and another 36 copies of each were distributed through the Service's automatic distribution list.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

February 6, 1978

Mr. Gregory J. Ahart
Director, Human Resources Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

The General Accounting Office draft report entitled "Health Hazard Evaluation Program Needs Improvement" criticizes OSHA for failure to make effective use of NIOSH Health Hazard Evaluation reports. OSHA has reexamined not only its policy concerning use of these reports, but also its practice of not entering a workplace where NIOSH is conducting a health hazard survey. As a result, certain changes are being implemented.

In the past, it has been OSHA's policy not to conduct an inspection if NIOSH is also visiting the workplace until NIOSH completes a health hazard evaluation. This was to avoid interference with NIOSH survey efforts and the presence of a large number of federal personnel in a private business establishment. OSHA now takes the position that there are certain instances where the Agency should enter a worksite regardless of the NIOSH activity. The new policy is as follows:

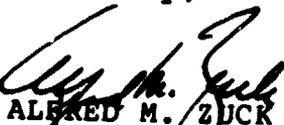
- o When OSHA learns of an imminent danger situation, an investigation will be made despite NIOSH's presence.
- o If OSHA receives an employee complaint alleging the presence of a workplace hazard, OSHA will conduct an inspection whether or not NIOSH is conducting an evaluation.
- o In cases where OSHA arrives at an establishment to conduct a general, programmed inspection and discovers a NIOSH evaluation team, the OSHA inspector will leave without conducting an inspection. As soon as NIOSH personnel have left the plant, the establishment can again be programmed for a general schedule inspection.

According to the GAO Report, Health Hazard Evaluation reports are currently forwarded by NIOSH to the OSHA Regional Offices. No uniform procedure is followed once they are received. OSHA now proposes that copies of HHE Reports be sent to the National Office, Office of Field Coordination, as well as to the regions. An immediate response shall be given to all imminent danger referrals made by NIOSH. If OSHA finds that a serious hazard is present, an inspection of the worksite will be scheduled as soon

as possible. If a serious hazard not covered by a specific standard is brought to OSHA's attention, OSHA will inspect to determine whether a violation of the general duty clause is present. Since employers are told from the outset that OSHA will be notified of the results of the evaluation this policy does not create a disincentive to request a survey.

Throughout Chapter 4 of the GAO Report, reference is made to OSHA's failure to respond to NIOSH requests for information. Nowhere are specifics given as to what information has been denied, but the report does state that OSHA has not provided information on the disposition of HHE reports and any action which results. The appropriate OSHA Regional Office will notify NIOSH either that no inspection will be made at the present time or of the results of the inspection if one is conducted. OSHA will confine its discussion of the inspection to the health issues and will indicate whether or not violations of OSHA standards were noted. This agency believes that no useful purpose would be served by supplying NIOSH with the entire inspection case file. The Office of Field Coordination will monitor the regions to assure that some decision is made when HHE reports are received and that NIOSH is notified of the action taken.

Sincerely,



ALFRED M. ZUCK
Assistant Secretary for
Administration and Management

GAO REPORTS ON RELATED SUBJECTS

1. Report to the Senate Committee on Labor and Public Welfare: "Slow Progress Likely in Development of Standards for Toxic Substances and Harmful Physical Agents Found in Workplaces" (B-163375, Sept. 28, 1973).
2. Report to various members of the House of Representatives: "Answers to Questions on the Issuance of an Emergency Temporary Standard for Certain Chemicals Considered to be Carcinogens" (B-179768, Jan. 6, 1975).
3. Report to the Congress: "Federal Efforts to Protect the Public from Cancer-Causing Chemicals Are Not Very Effective" (MWD-76-59, June 16, 1976).
4. Report to the Congress: "Better Data on Severity and Causes of Worker Safety and Health Problems Should Be Obtained from Workplaces" (HRD-76-188, Aug. 12, 1976).
5. Report to the Congress: "Delays in Setting Workplace Standards for Cancer-Causing and Other Dangerous Substances" (HRD-77-71, May 10, 1977).
6. Report to the Congress: "Sporadic Workplace Inspections For Lethal and Other Serious Health Hazards" (HRD-77-143, Apr. 5, 1978).

PRINCIPAL OFFICIALS RESPONSIBLE FOR
ACTIVITIES DISCUSSED IN THIS REPORT

Tenure of office
From To

DEPARTMENT OF LABOR

SECRETARY OF LABOR:

F. Ray Marshall	Jan. 1977	Present
W. J. Usery, Jr.	Feb. 1976	Jan. 1977
John T. Dunlop	Mar. 1975	Jan. 1976
Peter J. Brennan	Feb. 1973	Mar. 1975
James D. Hodgson	July 1970	Feb. 1973

ASSISTANT SECRETARY OF LABOR
FOR OCCUPATIONAL SAFETY
AND HEALTH:

Eula Bingham	Mar. 1977	Present
Vacant	Jan. 1977	Mar. 1977
Morton Corn	Dec. 1975	Jan. 1977
Vacant	July 1975	Dec. 1975
John H. Stender	Apr. 1973	July 1975
Vacant	Jan. 1973	Apr. 1973
George C. Guenther	Apr. 1971	Jan. 1973

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SECRETARY OF HEALTH, EDUCATION,
AND WELFARE:

Joseph A. Califano, Jr.	Jan. 1977	Present
David Mathews	Aug. 1975	Jan. 1977
Caspar P. Weinberger	Feb. 1973	July 1975
Elliot L. Richardson	June 1970	Jan. 1973

DIRECTOR OF THE CENTER FOR
DISEASE CONTROL:

David Sencer, M.D.	May 1977	Present
William H. Foege, M.D.	Feb. 1966	May 1977

DIRECTOR OF THE NATIONAL
INSTITUTE FOR OCCUPATIONAL
SAFETY AND HEALTH:

J. Donald Millar (acting)	Jan. 1978	Present
John F. Finklea, M.D.	Apr. 1975	Jan. 1978
Edward J. Baier (acting)	Sept. 1974	Apr. 1975
Marcus Key, M.D.	June 1971	Aug. 1974

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